



August 9, 2018

Madeline M. Van Nostrand  
U.S. Department of Transportation  
PHMSA FOIA Officer, PHC-30  
Office of Chief Counsel  
East Building, 2nd Floor, E27-322  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Orrick, Herrington & Sutcliffe LLP  
51 West 52nd Street  
New York, NY 10019-6142  
+1 212 506 5000  
[orrick.com](http://orrick.com)

Lisa Tonery  
[E ltoney@orrick.com](mailto:ltoney@orrick.com)  
D +1 212 506 3710  
F +1 212 506 5151

**Re: Cheniere Energy, Inc.**  
**FOIA Control Numbers: 2018-0078, 2018-0097, 2018-0103,**  
**2018-0153, 2018-0154**

Dear Ms. Van Nostrand:

Cheniere Energy, Inc. (“Cheniere”) is in receipt of your letter, dated July 3, 2018, informing it that a number of requests (“Requests”) had been filed by several parties (“Requesters”)<sup>1</sup> pursuant to the Freedom of Information Act (“FOIA”).<sup>2</sup> Requesters are seeking the following information related to the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration (“PHMSA”) investigation at Cheniere’s Sabine Pass LNG Facility:

1. 2017 Tank S-103 Report Matrix
2. Work Plan submitted April 6, 2018
3. Third Party Reports
4. Monthly Reports (March, April, May)
5. March 23, 2018 Hearing Transcript (nonpublic, redacted portion)
6. Root Cause Failure Analysis (submitted May 31, 2018)

---

<sup>1</sup> Mike Soraghan of E&E News made a request on March 9, 2018; Jenny Mandel of E&E News made a request on April 3, 2018 and two Requests on June 18, 2018; and Scott Hodes (“Mr. Hodes”) made a request on April 9, 2018. Mr. Soraghan and Ms. Mandel are collectively referred to herein as the “E&E News Requesters.”

<sup>2</sup> 5 U.S.C. § 552, *et seq.* (2012).



Items 1,<sup>3</sup> 2,<sup>4</sup> 3,<sup>5</sup> 4,<sup>3</sup> 5,<sup>6</sup> and 6<sup>3</sup> (together the “Requested Confidential Information”) contain trade secret and privileged and confidential information provided by Cheniere to PHMSA.

- 
- <sup>3</sup> Item 1 was marked with “Information contained in this document is strictly confidential and qualifies for confidential treatment under 5.U.S.C. 552(b). No person shall have any right to disseminate, reproduce, quote, report or in any manner whatsoever utilize or rely on the contents of this document or information without the prior written authorization of Sabine Pass LNG, L.P. in no circumstances shall the use of this document by any person or by Sabine Pass LNG, L.P. in any presentation, meeting or discussion with any person imply that any such authorization is given. Sabine Pass LNG, L.P. retains all rights to any intellectual property that may be contained in this document,” “This document qualifies for confidential treatment as a trade secret under 5.U.S.C. 552(b)(4) - DO NOT RELEASE” and “This document contains Protected Critical Infrastructure Information (PCII). In accordance with the provisions of the Critical Infrastructure Information Act, 6 U.S.C. §§ 131 et seq., it is exempt from release under the Freedom of Information Act (5 U.S.C. § 552) and similar State and local disclosure laws. Unauthorized release may result in criminal and administrative penalties. It is to be safeguarded and disseminated in accordance with the Critical Infrastructure Information Act, 6 U.S.C. §§ 131 et seq., the implementing Regulation, 6 C.F.R. Part 29 and PCII Program requirements.”
  - <sup>4</sup> Items 2, 4 and 6 were marked “Information contained in this document is strictly confidential and qualifies for confidential treatment under 5.U.S.C. 552(b). No person shall have any right to disseminate, reproduce, quote, report or in any manner whatsoever utilize or rely on the contents of this document or information without the prior written authorization of Sabine Pass LNG, L.P. in no circumstances shall the use of this document by any person or by Sabine Pass LNG, L.P. in any presentation, meeting or discussion with any person imply that any such authorization is given. Sabine Pass LNG, L.P. retains all rights to any intellectual property that may be contained in this document” and “This document qualifies for confidential treatment as a trade secret under 5.U.S.C. 552(b)(4) - DO NOT RELEASE.”
  - <sup>5</sup> Item 3 documents were marked with “This document qualifies for confidential treatment as a trade secret under 5 U.S.C. § 552(b)(4)-DO NOT RELEASE.” or “THIS DOCUMENT IS THE PROPERTY OF CHICAGO BRIDGE & IRON COMPANY (CB&I). IT MAY CONTAIN INFORMATION DESCRIBING TECHNOLOGY OWNED BY CB&I AND DEEMED TO BE COMMERCIALLY SENSITIVE. IT IS TO BE USED ONLY IN CONNECTION WITH WORK PERFORMED BY CB&I. REPRODUCTION IN WHOLE OR IN PART FOR ANY PURPOSE OTHER THAN WORK PERFORMED BY CB&I IS FORBIDDEN EXCEPT BY EXPRESS WRITTEN PERMISSION OF CB&I. IT IS TO BE SAFEGUARDED AGAINST BOTH DELIBERATE AND INADVERTENT DISCLOSURE TO ANY THIRD PARTY.” or “Information contained in this document is strictly confidential and qualifies for confidential treatment under 5.U.S.C. 552(b). No person shall have any right to disseminate, reproduce, quote, report or in any manner whatsoever utilize or rely on the contents of this document or information without the prior written authorization of Sabine Pass LNG, L.P. in no circumstances shall the use of this document by any person or by Sabine Pass LNG, L.P. in any presentation, meeting or discussion with any person imply that any such authorization is given. Sabine Pass LNG, L.P. retains all rights to any intellectual property that may be contained in this document.” To the extent that any Qualified Independent Third-Party reports were not so marked, the failure to mark as confidential was inadvertent and in error. All Qualified Independent Third-Party reports submitted pursuant to the CAO are confidential trade secret information.
  - <sup>6</sup> Item 5 was marked “CRITICAL ENERGY / ELECTRIC INFRASTRUCTURE INFORMATION, CONFIDENTIAL BUSINESS INFORMATION, AND CONFIDENTIAL INFORMATION” and the transmittal made the following request: “The enclosed transcript is unredacted and contains Critical Energy/Electric Infrastructure Information, Confidential Business Information, and confidential information. Per 49 C.F.R. §190.343(a), Sabine Pass Liquefaction, LLC formally requests the protection of this information. Each page of the document is marked “confidential.” 49 C.F.R. § 190.343(a)(3) requires an operator to explain the basis for treating submitted information as confidential. The enclosed transcript contains Critical Energy/Electric Infrastructure Information, Confidential Business Information, and confidential information because it transcribes hearing discussion related to detailed design schematics, proprietary analysis and procedures, and specific vulnerabilities related to critical infrastructure. Accordingly, Sabine Pass requests that PHMSA treat this



With the exception of the extracted pages in the attached PDF,<sup>7</sup> Cheniere opposes the disclosure of the Requested Confidential Information because (1) the Requested Confidential Information contains trade secret and commercially sensitive confidential information protected from disclosure under FOIA<sup>8</sup> ("Exemption 4"); (2) release of the Requested Confidential Information does not fulfill the purposes of FOIA; and (3) Requesters have not identified any public interest supporting their requests which outweighs Cheniere's interest in privacy. Cheniere further requests that any phone numbers, email addresses and physical addresses be redacted from any information released (including the cover letters in the attached PDF), because such personal information is protected from disclosure under FOIA Exemption 6.<sup>9</sup>

1. The Requested Confidential Information Is Exempt from Disclosure Under Exemption 4

Cheniere opposes the disclosure of the Requested Confidential Information pursuant to Exemption 4. Exemption 4 covers two categories of information in federal agency records: (1) trade secrets; and (2) information that is (a) commercial or financial, (b) obtained from a person, and (c) privileged or confidential. The Requested Confidential Information is exempt under both standards as proprietary trade secret information and as proprietary business confidential information.

The Requested Confidential Information includes trade secret information that has been developed by Cheniere and various vendors and consultants on behalf of and at significant expense to Cheniere. "Trade secret" is narrowly defined as "a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort."<sup>10</sup> Trade secret protection has been recognized for blueprints and design information.<sup>11</sup> Courts have

---

information as confidential as described in § 190.343(b), including following the consultation procedures set out in the Departmental FOIA regulations, 49 CFR § 7.29, and providing written notification at least five business days before the intended disclosure date if PHMSA decides to disclose the information over our objections."

<sup>7</sup> The attached PDF includes an excerpt from Item 1 (Page 1 of the PDF), an excerpt from Item 2 (Pages 1-3 of PDF), an excerpt from Item 4 (Pages 1-3 of PDF for the May Monthly Report and Pages 1-4 of PDF for each the March and April Monthly Reports), an excerpt from Item 5 (Pages 1-2 of the PDF) and an excerpt from Item 6 (Pages 1-3 of the PDF).

<sup>8</sup> *Id.* § 552(b)(4).

<sup>9</sup> 5 U.S.C. § 552(b)(6). *See, e.g., Electric Frontier Found. v. Office of the Dir. Of Nat'l Intelligence*, 639 F.3d 876, 888-89 (9th Cir. 2010) ("[T]he carriers' agents' email addresses, when not needed to identify the party communicating with the government, are protected from release by Exemption 6. If, however, a particular email address is the *only* way to identify the carriers' agent at issue from the disputed records, such information is not properly withheld under Exemption 6...." (emphasis in original)); *Lewis v. U.S. Dep't of Justice*, 867 F. Supp. 2d 1, 17 (D.D.C. 2011) (recognizing a privacy interest in telephone numbers).

<sup>10</sup> *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

<sup>11</sup> *See, e.g., Herrick v. Garvey*, 200 F. Supp. 2d 1321, 1326-28 (D. Wyo. 2000) (finding "technical blueprints depicting the design, materials, components, dimensions and geometry of the aircraft, engineering analyses, and engineering test reports" were "within the scope of Exemption 4"), aff'd, 298 F.3d 1184, 1190 n.3 (10th Cir. 2002) (noting requester's concession at oral argument that blueprints remained commercially valuable); *Heeney*



further noted that “trade secret information regarding...processes, as well as quality control and internal security measures, of private business entities” was a sufficiently specific description of sensitive information to trigger Exemption 4.<sup>12</sup> The Requested Confidential Information contains detailed data, design information, analyses, schematics, procedures and specifications regarding Cheniere’s Sabine Pass LNG Facility. Moreover, some of the Requested Confidential Information is subject to confidentiality agreements between Cheniere or its affiliates and its vendor/consultants.

Prior to submission of the Requested Confidential Information to PHMSA, Cheniere took reasonable measures to protect this material by clearly marking it as confidential trade secret or commercial information. This is evidenced by Cheniere’s actions with respect to the manner in which it submitted the Requested Confidential Information: Cheniere (1) informed PHMSA that it considered the Requested Confidential Information to be confidential trade secret or commercial information; (2) requested confidential treatment for the material; and (3) marked the documents as confidential trade secret or commercial information not to be released or provided redacted copies if the entirety of the document was not considered confidential.<sup>13</sup>

If PHMSA concurs that the Requested Confidential Information is trade secret information, it should not be released. If the information does not qualify as a trade secret, it may still be protected under Exemption 4. In this regard, the Requested Confidential Information also is protected from release under FOIA Exemption 4 because it contains information that is (1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential. As indicated above, the Requested Confidential Information contains trade secret and proprietary information and data developed by Cheniere and various vendors and consultants on behalf of Cheniere, some of which is subject to confidentiality agreements between Cheniere or its affiliates and its vendor/consultants. The D.C. Circuit has held that an “agency may ... withhold involuntarily submitted information as confidential if disclosure would (1) impair the agency's ability to get information in the future or (2) cause substantial competitive harm to the entity that submitted the information.”<sup>14</sup>

A showing of actual harm is not necessary for Exemption 4 to apply. The Courts have clearly recognized that commercially sensitive information must not be disclosed if such disclosure “is likely to . . . cause substantial harm to the competitive position of the person from whom the

---

<sup>11</sup> *v. FDA*, No. CV 97-5461, 1999 WL 35136489, \*7 & n.13 (C.D. Cal. Mar. 16, 1999) (finding “design and testing data,” including compliance testing results and “specification of the materials used in constructing” electrode catheter. “fall squarely within Exemption 4’s reference to ‘trade secrets’”), aff’d, 7 Fed. Appx. 770 (9th Cir. 2001).

<sup>12</sup> *Am. Small Bus. League v. Dep’t of Def.*, 674 Fed. Appx. 675, 677 (9th Cir. 2017) (*citing Bowen v. U.S. Food & Drug Admin.*, 925 F.2d 1225, 1227–28 (9th Cir. 1991)).

<sup>13</sup> See *infra*, notes 3-6.

<sup>14</sup> See *Judicial Watch Inc. v. FDA*, 449 F.3d 141, 148 (D.C. Cir. 2006).



information was obtained.”<sup>15</sup> In *People for the Ethical Treatment of Animals v. U.S. Department of Agriculture*, the court held that “[a]n agency can establish a likelihood of substantial competitive injury by demonstrating that disclosure would provide competitors with valuable insights into the company’s operations, give competitors pricing advantages over the company, or unfairly advantage competitors in future business negotiations.”<sup>16</sup> Similarly, the U.S. District Court for the District of Columbia has upheld the withholding of “(1) data, experiences, approaches, and methodologies; (2) proprietary processes, organization of reports and analyses, facilities, and equipment; and (3) financial information”<sup>17</sup> where the agency posited that “disclosure of the redacted information would, among other things, allow other entities to gain insight into...confidential and proprietary information and strategies, [and] take advantage of techniques and approaches developed by [the company] without any cost.”<sup>18</sup> Likewise, the Federal Energy Regulatory Commission has held that “[r]elease of portions of [a report], which contain, among other things, commercially sensitive engineering data and plans and schematics...might cause competitive harm”.<sup>19</sup>

In this regard, the disclosure of all or any portion the Requested Confidential Information would result in irreparable commercial and competitive harm to Cheniere and/or the vendors and consultants that generated the Requested Confidential Information on behalf of Cheniere. In particular, release would cause substantial harm to Cheniere’s competitive position as the sponsor of the first operational LNG export facility in the continental U.S. Cheniere’s direct competitors include all other LNG projects currently in operation and in development.<sup>20</sup> Based on the global nature of the LNG business, competitors include not only projects in the U.S. but abroad as well, all of which are looking to tap into the global LNG market. The LNG export market is extremely competitive and price sensitive. U.S. LNG projects are in competition for contracts to supply LNG to foreign nations with import capabilities, for construction contractors and third-party assistance.

<sup>15</sup> *Amoco Prod. Co. and Amoco Energy Trading Corp. v. Natural Gas Pipeline Co. of America*, 82 FERC ¶ 61,231, 61,882-83 (1998).

<sup>16</sup> *People for the Ethical Treatment of Animals v. U.S. Dep’t of Agric.*, No. 03 C 195-SBC, 2005 U.S. Dist. LEXIS 10586, at 19-20 (D.D.C. May 24, 2005).

<sup>17</sup> *Urban Air Initiative, Inc. v. Envtl. Prot. Agency*, 271 F. Supp. 3d 241, 257 (D.D.C. 2017)

<sup>18</sup> *Id.* at 258.

<sup>19</sup> *Order Denying Request for Critical Energy Infrastructure Information*, 116 FERC ¶ 62,168 (2006). Similarly, the Federal Energy Regulatory Commission has held that pursuant to Exemption 4, it “appropriately withheld from public release privileged and confidential, proprietary CEII information that could cause competitive harm” including contractor’s spreadsheets and underlying programs. *Millennium Pipeline Co., L.L.C.*, 141 FERC ¶ 61,198 (2012).

<sup>20</sup> With regard to the Sabine Pass LNG Facility, Cheniere’s direct competitors include but are not limited to: Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, FLNG Liquefaction 3, LLC, Cameron LNG, LLC, Lake Charles LNG Export Company, LLC, Lake Charles LNG Company, LLC, Magnolia LNG, LLC, Golden Pass Products, LLC, Gulf LNG Liquefaction Company, LLC, Venture Global Calcasieu Pass, LLC, Texas LNG Brownsville LLC, Rio Grande LNG, LLC, Anova LNG Common Infrastructure, LLC, Anova LNG Brownsville A, LLC, Anova LNG Brownsville B, LLC, Anova LNG Brownsville C, LLC, Port Arthur LNG, LLC, Eagle LNG Partners Jacksonville LLC, Driftwood LNG LLC, and Jordan Cove Energy Project, L.P.



Therefore, competition amongst LNG export projects to complete construction in the most efficient manner possible and to provide the lowest prices to customers is vital to continued success.<sup>21</sup> Detailed facility design is one of the most critical and expensive components of the overall plans for an LNG facility.

Cheniere developed this highly sensitive commercial and trade secret information exclusively for its own use, at significant cost. Disclosure of this information, to any person who could release it publicly, would provide detailed design and operations information regarding the Sabine Pass LNG Facility, which would be of tremendous commercial interest and monetary value to competitors seeking to develop LNG export facilities. Such competitors could use this information to better understand Cheniere's operations and gain a competitive edge without expending their own resources. These competitors would receive an unfair competitive advantage having received valuable, proprietary, detailed instructions on plant construction and operation for free, driving their prices and costs down, without the cost and effort of development.

Specifically, Item 1 (the Matrix Report) provides a technical analysis of process data associated with Tank S-103 at the Sabine Pass LNG Facility. Both the analysis and the data itself are proprietary technical information developed at Cheniere's expense for its sole use. The information included in the Matrix Report discloses processes, methods, and supporting data and analyses relating to the Sabine Pass LNG Facility.

Similarly, Item 2 (the Work Plan) contains a detailed comprehensive work plan that includes tank-specific purging plans, a root-cause analysis plan, a detailed repair and modification plan, a continuing operation plan for facilities that remain in service, and a plan to return the affected tanks to service. Item 2 includes proprietary technical information relevant to the isolation, inspection, repair, and future operation of Tanks S-101 and S-103 at the Sabine Pass LNG Facility. This proprietary technical information includes operational procedures, reports, and other analyses that disclose processes, methods, and supporting data and analyses relating to the Sabine Pass LNG Facility, which were developed at Cheniere's expense for its sole use.

Item 3 (the Third Party Reports), Item 4 (the Monthly Reports), Item 5 (the March 23, 2018 Hearing Transcript) and Item 6 (the Root Cause Failure Analysis) all include proprietary technical information relevant to operations at the Sabine Pass LNG Facility and to the ongoing repair of Tanks S-101 and S-103. The information in Items 3-6 disclose processes, methods, and supporting data and analyses relating to the Sabine Pass LNG Facility, which were developed at Cheniere's expense for its sole use. In particular, Item 3 contains detailed design drawings, technical procedures, and technical specifications. All Qualified Independent Third-Party reports submitted pursuant to the CAO are confidential trade secret information.

---

<sup>21</sup> See, e.g. Gaurav Sharma, *U.S. LNG Exporters Reshaping Global Natural Gas Markets*, Forbes (March 7, 2018) available at <https://www.forbes.com/sites/gauravsharma/2018/03/07/u-s-shale-exporters-reshaping-global-natural-gas-markets/#33920c631089>; Tim Boersma, Charles K. Ebinger, and Heather L. Greenley, *An assessment of U.S. natural gas exports*, The Brookings Institution (July 13, 2015) available at <https://www.brookings.edu/research/an-assessment-of-u-s-natural-gas-exports/>.



2. Disclosing the Requested Confidential Information Would Not Fulfill the Purposes of FOIA

Exemption 4 affords protection to those submitters who are required to furnish commercial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure. If there is a requirement that this type of confidential information be filed with PHMSA, as is the case here, it must carry some assurance that the information will remain confidential in order to protect the persons from whom the information was received, even if the harm of releasing such information may fall on parties other than Cheniere. FOIA would be undermined by requiring disclosure of confidential information when doing so would lead to Cheniere's competitive disadvantage, and therefore PHMSA should deny the Request.

3. Requesters have Failed to Identify any Public Interest in Releasing the Requested Confidential Information that Outweighs Cheniere's Privacy Interests

All of the Requesters have made vague generalized statements in support of the Requests. Mr. Hodes has not provided any reason for releasing the Requested Confidential Information, nor has he identified any public interest for doing so. Mr. Hodes' FOIA request merely states that he is seeking the Requested Confidential Information in electronic format and provides no reason why it should be released. The E&E News Requesters state that release will "contribute significantly to public understanding of how the federal government ensures pipeline safety" or "contribute to the public's understanding of your agency and the government at large." Cheniere, in contrast, has provided substantial support for its position that its privacy and competitive position might be harmed by releasing the Requested Confidential Information. Balancing these arguments demonstrates that Cheniere's interests outweigh the Requesters'.

In conclusion, the Requested Confidential Information should not be released to the Requesters because (1) it contains confidential trade secret and commercial information that would harm Cheniere's competitive position if released, (2) its release does not fulfill the purposes of FOIA, and (3) the Requesters have not identified any public interest supporting the Requests that outweighs Cheniere's interest in privacy.

Should you have any questions about the instant filing, please feel free to contact the undersigned at (212) 506-3710.

Respectfully Submitted,

/s/ Lisa M. Tonery

Lisa M. Tonery

Mariah T. Johnston

*Attorneys for*

*Cheniere Energy, Inc.*